GUNNING SYSTEM
vs.
CITY OF CHICAGO
} BILL FOR INJUNCTION.

In the Superior Court of Cook County,
In Chancery:

BEFORE HON. AXEL CHYTRAUS, JUDGE.

ARGUMENT AND BRIEF OF

BYRON BOYDEN,

Solicitor for Defendant, and Counsel for the

MUNICIPAL ART LEAGUE
OF CHICAGO.

HAMLIN & BOYDEN,
OF COUNSEL.

BILL-BOARD CASE.

FACTS AND LAW.

SUPPLEMENT.

We beg leave to lay before you, for your consideration, this pamphlet on the subject of bill-boards, and to call to your notice the proposed legislation for the purpose of regulating the growing evil of sign advertising.

The following bill has been introduced in the General Assembly at the present session:

"*An Act to extend the powers of the City Council in cities and the President and Board of Trustees in villages and incorporated towns.*"

SECTION 1. "*Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the City Council in cities and the President and Board of Trustees in villages and incorporated towns shall have the power to license street advertising and bill-board companies, and to regulate and prohibit signs and bill-boards upon vacant property and upon buildings advertising other business than that of the occupant."

The regulation of bill-boards is a matter that requires police supervision and inspection, for the reason that these structures may become a menace to the safety and health of the people.

The State of Illinois, under its police power, has the authority to regulate this business, and, if circumstances arise making it necessary, the State could prohibit the business. Granting that such circumstances might never arise, still it is within the bounds of possibility. The Act does not prohibit anything; it merely delegates to the city the power inherent in the State.

Our Committee desire to call your attention to the following:

FIRST. To the ordinance passed by the City Council of the City of Chicago on July 9, 1900, regulating bill-boards. (See page 17 of the following brief.)

The City Council, the disinterested people of Chicago, and the Municipal Art League are of the firm conviction that the main provisions of this ordinance are reasonable, equitable and fair to the bill-board companies, the city and the citizens. The provision limiting the length of the bill-board should be more liberal; in other respects it does not restrict or interfere with the business of sign advertising companies further than is actually necessary for the safety, health and comfort of the people.

SECOND. To the decision of Judge Chetlain, of the Superior Court of Cook County, holding this ordinance legal with the exception of Sections 4 and 5. (See page 27 of brief.)

THIRD. To the language of Hon. G. Fred Rush, Master in Chancery of the Superior Court, holding the provisions of the ordinance reasonable and fair, with the exception of Sections 4 and 5.

Mr. Rush spent a great deal of time and attention to the questions involved, and his opinion is entitled to great consideration. (See pp. 19-26 of brief.)

FOURTH. To Section 4 of the ordinance.

This section provides for the consent of the residents and property owners on boulevards, pleasure driveways and residence streets before a bill-board can be erected.

We earnestly contend that this provision is reasonable and just and should be incorporated in any ordinance regulating bill-boards.

We are advised that unless the legislature pass the Act now pending before it, containing the word "prohibit," the

validity of a section containing a provision similar to Section 4 in any ordinance hereafter to be passed, would be extremely doubtful. That every city in the State should have the power to pass an ordinance restricting the use, by bill-board companies, of property abutting upon its boulevards, pleasure driveways, residence streets and in front of its parks, must be admitted by every unprejudiced man.

A large amount of money, raised by taxation, is expended every year on parks and boulevards, and all cities should have the power to protect them from depreciation and defacement.

FIFTH. It is conceded that Section 5 of the ordinance is unreasonable. This defect is easily remedied.

SIXTH. To the present inadequate powers of the City Council under the Act for the incorporation of cities and villages, relating to the subject matter. (See p. 19 of brief.)

SEVENTH. The City Council, under the Cities and Villages Act, now has the power to *prohibit* theatricals and other exhibitions, shows and amusements. Under this power the city has passed a reasonable ordinance regulating theatres. No attempt has ever been made to *prohibit* theatrical entertainments.

A reasonable and fair law relating to and regulating bill-boards is all the people desire, and we can say, without fear of contradiction, that all the citizens of the State of Illinois, from its northern boundary to the Ohio River, demand such a law.

EIGHTH. This Committee is in possession of certain information that the bill-board companies known as the Gunning System, the American Posting Service and the Cusack Company now are maintaining within the limits of the City of Chicago over 205,000 lineal feet of wooden bill-boards of a height not less than ten feet.

It is worth while to think seriously of this matter.

NINTH. No hospital or livery stable can be erected in the City of Chicago without first obtaining the written consent of the owners of property and residents in the vicinity where the hospital or stable is proposed to be erected. While this is an important law, a similar law in relation to bill-boards would be of far greater importance. In comparison with bill-boards, hospitals and livery stables are few and far between, and all three may reasonably be said to come within the general police powers relating to the comfort, health and safety of the citizens.

TENTH. We beg to call your attention to the decision of the New York Court of Appeals in the case of City of Rochester vs. West. (See pp. 35-40 of brief.)

The City of Rochester passed an ordinance, which is upheld by the Court of Appeals, prohibiting the erection of a bill-board exceeding **six feet** in height without the express consent of the City Council.

The ordinance we advocate is far more liberal in its terms than the Rochester ordinance.

In conclusion, we beg to call your attention to the importance of the word "prohibit" in the proposed Act, and to reiterate our belief that all cities in the State should be given power to protect their parks, boulevards, pleasure driveways and residence streets, and that the citizens should have a voice in this matter, inasmuch as it is their money which is used to make these streets and parks the beautiful places in every city. We ask you to write to the member of the State Legislature representing your district, urging the passage of this bill.

Yours respectfully,

WILLIAM H. BUSH, *Chairman.*
HONORE PALMER,
REUBEN H. WARDER,
J. C. PATTERSON,
BYRON BOYDEN,
MRS. HERMAN J. HALL,
Bill-Board Committee, Municipal Art League.

GUNNING SYSTEM
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BEFORE HON. AXEL CHYTRAUS, JUDGE.

ARGUMENT ON FACTS.

This is a bill for an injunction against the City of Chicago, brought by a bill-board company, known as the Gunning System, for the purpose of perpetually enjoining and restraining the City of Chicago from enforcing an ordinance in relation to bill-boards duly passed by the City Council, and also to forever enjoin and restrain the city from interfering, in any manner, with the vast number of frame bill-boards now erected throughout the city, or from interfering with any new bill-boards the complainant company may see fit to erect.

The testimony before the Master, at the time of the hearing, discloses that the complainant was the owner of a large number of wooden bill-boards, used for advertising purposes, measuring from twelve to thirty-six feet in height, and from twelve to four hundred feet in length, all of them having a superficial area in excess of one hundred square feet. They are all

constructed of pine boards, very much like an ordinary fence. As compared with ordinary building structures it cannot be said that these boards, carried to the height aforesaid, and situated at or near the sidewalks and composed of ordinary fence boards, are safe, substantial or permanent.

During the four days of oral argument in this case the meagre facts in this record were not thoroughly touched upon by any counsel. It now becomes our duty to place before the court the simple facts from which we will endeavor to demonstrate that this bill should be dismissed for want of equity.

Before the first bill-board was erected the following ordinances were in force in the City of Chicago, and had been in force for a great many years, and have remained, unquestioned, the law. No one can be found who would have the temerity to question their validity, for an instant. Full power was delegated by the State Legislature to the City Council to pass these ordinances, and they have the same force and effect as laws passed by the Legislature of the State. (Introduced in evidence. Record, pp. 47-129.)

FRAME BUILDINGS.

272. Fire Limits. The fire limits of the City of Chicago shall be as defined by existing ordinances. No wall, *structure*, building, or part thereof shall hereafter be built, constructed, altered or repaired within the fire limits of the City of Chicago except in conformity with the provisions of this chapter. No building already erected or hereafter to be built within said fire limits shall be raised, altered or built upon in such manner that, were said building wholly rebuilt or constructed after the passage of this chapter, it would be in violation of any of its provisions.

The provisions of this chapter as to the strength and stability of timber constructions shall also apply to the construction of frame buildings outside of the fire limits.

464. Wood Fence—Height. No wooden fence shall be higher than eight feet above the sidewalk grade, or eight feet above the surface of the ground where no grade is established.

282. Sheds — Size — Location — Use. Sheds not exceeding fourteen feet in height from the ground at the highest part thereof, and not exceeding two hundred and fifty-six feet in area, with an incombustible roof, may be constructed of wood; such sheds shall not be located on the front part of any lot, nor shall they be used as a dwelling, or an addition to a dwelling house, or for any business purposes whatever, nor shall more than one shed be erected on any one building lot of twenty-five feet.

463. Signs on Buildings. All signs placed on any building above the level of the third story of the same shall be made of incombustible material. Wooden signs shall not be more than two feet wide.

The word "structure," as used in section 272 of the above ordinances, is defined by Anderson in his legal dictionary to be "some permanent, stationary erection." This definition thoroughly covers the structures known as bill-boards.

As was said above, these four ordinances have been the law in the City of Chicago for years, and from them may be deduced the following evident facts:

1. No private person can erect a frame building or structure on his private property within the fire limits.

2. No private person can erect a fence around or in front of his property, either at the sidewalk line or back from it, of a height of over eight feet.

3. No private person can erect a frame shed on his private property, except it be situated in the rear of his lot, and it must not be of over 256 square feet in superficial area.

4. No private person can attach a wooden sign to his house or building of over two feet in width.

Notwithstanding these laws and ordinances, the Gunning System, the complainant in this case, asking for relief in a court of equity, has succeeded in erecting and maintaining a vast number of frame bill-boards that violate every single provision of the four ordinances above mentioned, being every law in force in the City of Chicago in relation to the subject matter.

The Gunning System is above the law. Strange to say, some three hundred of the bill-boards erected by the Gunning System, contrary to the ordinances of the city, were erected under permits issued by the Commissioner of Buildings.

These permits, introduced in evidence (record, p. 6), are very peculiar and show a strange state of affairs existing in the building department of the city.

The following are *fac-simile* copies of these permits:

" No. *1149.*

BUILDING PERMIT.

OFFICE OF THE COMMISSIONER OF BUILDINGS.

Chicago, *5-19-1899.*

Permission is hereby granted to *R. J. Gunning & Co.* to erect a *fence 12 ft. high & 300 ft. long*, feet front, by_____feet deep,_____feet high from

ground level to highest part thereof_____
_____ _____No. *S. W. cor. 58th Str. and Grand Bld.* Street.

This permit is granted upon the express condition that the said *R. J. Gunning & Co.* in the erection of said building shall conform in all respects to the Ordinances of the City of Chicago, regulating the construction of buildings in the city limits, and may be revoked at any time upon the violation of any of the provisions of said Ordinance.

By order of the Commissioner of Buildings.

Jas. McAndrews,
Commissioner of Buildings."

" No. *1195.*

BUILDING PERMIT.

OFFICE OF THE COMMISSIONER OF BUILDINGS.

Chicago, *5-22-1899.*

Permission is hereby granted to *R. J. Gunning & Co.* to erect a *fence 12 ft. high & 300 ft. long*, feet front, by_____feet deep, _____feet high from ground level to highest part thereof_____
_____ No. *N. E. cor. 59th & Cottage Grove Ave.* Street.

This permit is granted upon the express condition that the said *R. J. Gunning & Co.* in the erection of said building shall conform in all respects to the Ordinances of the City of Chicago, regulating the construction of buildings in the city limits, and may be revoked at any time upon the violation of any of the provisions of said Ordinance.

By order of the Commissioner of Buildings.

Jas. McAndrews,
Commissioner of Buildings."

" No. *784.*

BUILDING PERMIT.

OFFICE OF THE COMMISSIONER OF BUILDINGS.

Chicago, *4-28-1898.*

Permission is hereby granted to *The R. J. Gunning & Co.* to erect a *fence 12 ft. high & 300 ft. long*, feet front, by *150 ft. on Michigan Ave., 150 ft. on 43rd Str.*, feet deep, _____feet high from ground level to highest part thereof_____No. *N. W. cor. Michigan Ave & 43rd* Street.

This permit is granted upon the express condition that the said *R. J. Gunning & Co.* in the erection of said building shall conform in all respects to the Ordinances of the City of Chicago, regulating the construction of buildings in the city limits, and may be revoked at any time upon the violation of any of the provisions of said Ordinance.

By order of the Commissioner of Buildings.

Jas. McAndrews,
Commissioner of Buildings."

It will be observed that the permits are for **FENCES** 12 feet high and 300 feet long. The word " fence " is written in the permit with pen and ink by the clerk issuing the permit.

These permits violate the ordinance prohibiting frame *structures* within the fire limits; they violate the ordinance prohibiting fences over eight feet in height; and they violate the ordinance prohibiting sheds being over 256 square feet in superficial area.

They were obtained by fraud, by having a political " pull," by the accommodating methods of the Building Commissioner.

The following is the testimony of Deputy Building Commissioner O'Shea concerning these permits:

Q. The subsequent permits that were issued, which you say were signed by Commissioner McAndrews and referred to in your testimony-in-chief, was there any authority under the city laws or ordinances for the issuing of those permits?

A. None, whatever.

Q. State whether or not there was any special order or direction from any authority of the city prohibiting the issuing of permits for building fences or sign-boards over eight feet high.

A. The Mayor issued orders for bill-boards to be erected not to exceed, I think, 12 feet high, and that they should stand three feet off the ground from the lower edge of it.

Q. If this permit authorized the placing of any signs at the place named, did you have any authority under the ordinances of the city, or in any other way, to authorize the placing of signs at this point?

A. No, sir. I had no authority to do so, only fences eight feet high, unless I got instructions from the Commissioner. It must have been done by orders issued by him or there would not have been any permit issued. I asked the chief permit clerk who authorized the issuing of those permits, for I knew that the ordinance did not, and he said the orders must have come direct from the Commissioner of Buildings. Then I went to the bookkeeper and I asked him was there any record of this, and he said these permits were all issued as

fences not to exceed 12 feet. That is the first that I had known that the records were kept in that way. I supposed the record was kept for bill-boards.

Q. Can you state, then, why these permits were issued?

A. Those men wanted to get permission to put up those signs and the ordinance did not give us any right to do so, and I am satisfied that the Commissioner of Buildings did it to accommodate the men. He let them put them up. (Record, pp. 38-46.)

This testimony tells the story—comment on it is unnecessary. The officers of the Gunning System knew they were not entitled to any such permits; O'Shea knew it, the clerks in the office knew it, and the Building Commissioner knew he was violating the law and issuing permits merely for the purpose of blinding the police department and deceiving the residents in the locality where the proposed bill-board was to be erected. It was a fraud on the people, and should not be countenanced by a court of equity for an instant.

In deference to Mayor Harrison the writer desires to say that he had the pleasure of being one of a committee of gentlemen of the Art League who called upon the Mayor of the City of Chicago to present their views in reference to the bill-board nuisance, and to ask his assistance in abating or controlling the evil. During the course of the conference a reference was made to the testimony of O'Shea, and the part above quoted was read. The writer then said: "Mr. Mayor, if any of the gentlemen here thought that such an order emanated from the Mayor's office we would not

be here. On the contrary, we distinctly say that we believe no such order was ever issued by you. That such an order was issued by some one there is no doubt, and the truth is it originated in the brain of one "Jim" McAndrews, the politician, at that time holding the office of Building Commissioner." Mayor Harrison said: "Gentlemen, the only order I ever issued was after the passage of the bill-board ordinance, and my order then was to issue no permit except in strict compliance with that ordinance." The Mayor then intimated that he was in sympathy with the movement to regulate the bill-boards, but that, as the matter was in court, his hands were tied until a decision had been reached.

Any layman will immediately perceive from reading the foregoing that the regulation of bill-boards is wholly in the power of the Mayor and his building department, taking the law as it was before the passage of the so-called bill-board ordinance in controversy in this case. No one, unless he violates the law, can build a structure in the City of Chicago without first obtaining a permit for such construction. The Gunning System recognizes this as the law, else why make arrangements with a political building commissioner to issue it permits? By using his power the Mayor could force the bill-board companies to bow to the law and, if thought necessary and convenient, force them to agree to an ordinance satisfactory to the citizens and such an one as would hold the bill-boards within bounds and go a long ways towards making our city what it should be instead of an eyesore.

The Mayor could, under the law as it existed prior to the passage of this bill-board ordinance, refuse to allow a single wooden bill-board to be erected within

the fire limits, and the courts would sustain him in this refusal.

During the oral argument in this case nearly a day was occupied by counsel for complainant in arguing that the ordinance in controversy in this case was void on account of unjust discrimination.

Unjust Discrimination! Yet the Gunning System can erect frame structures 12 feet high and 300 feet long, and in many instances 24 and 36 feet in height (Master's report, p. 3), when a citizen is compelled, by the law, to keep his fences within 8 feet in height; his shed within 256 square feet superficial area; his signs, on a building, not over 2 feet wide; and his structures and buildings of fire-proof material within the fire limits. Let a citizen build a fence or a shed over the limit prescribed by law, and the city officials will order it torn down. Why? To guard against the calamities of fire. Chicago has had two experiences and she does not want another.

There is no intention of forcing these companies out of business, but they must erect fire-proof bill-boards of reasonable dimensions, and some reasonable restriction must be placed upon their erection on property abutting upon the boulevards, parks, pleasure driveways and residence streets.

Let us consider here just what the City of Chicago contemplates in the regulation of the bill-boards.

The following is the admirable ordinance drafted and introduced into the City Council by Alderman Patterson, of the Twelfth Ward, and which was passed by that body after due consideration. He is entitled to a great deal of credit for formulating and being the father of this ordinance. It is fair and reasonable in its terms to both the city and the bill-board companies in its main features.

Be it ordained by the City Council of the City of Chicago:

Section 1. All signs or bill-boards other than those painted or erected upon any building shall be limited in their superficial area to 100 square feet, and shall be constructed of sheet or galvanized iron, or some equally non-combustible material, and such signs or bill-boards shall not be located nearer than twenty-five (25) feet back of the front line of the lot whereon the same is to be constructed; *provided*, that signs not to exceed twelve (12) square feet each may be made of wood, but such signs shall in all other respects comply with above section.

Section 2. No such sign or bill-board shall be constructed at a greater height than ten (10) feet above the level of the adjoining streets, and the base of the sign or bill-board shall be in all cases at least three (3) feet above the level of the adjoining streets; in case the grade of adjoining streets has not been established, no sign or bill-board shall be constructed at a greater height than ten (10) feet above the ground.

Section 3. No such sign or bill-board shall be erected within five (5) feet of any other sign or bill-board, and each such sign or bill-board shall have independent support.

Section 4. No such sign or bill-board shall be erected upon or along any boulevard or pleasure driveway, or in any street where three-quarters (¾) of the buildings in such street are devoted to residence purposes only, unless the person or persons desiring to erect such sign or bill-board shall first have secured the consent, in writing, of three-quarters (¾) of the residence and property-owners on both sides of the street

in the block where it is desired to erect such sign or bill-board.

Section 5. All owners of signs or bill-boards erected before the passage of this ordinance, which signs or bill-boards have a superficial area exceeding one hundred (100) square feet, or which are of greater height than ten (10) feet above the surface of the ground (other than such signs or bill-boards as are painted or erected upon buildings), shall pay an annual license on the first day of July of each year, at the rate of fifty (50) cents per square foot; and in case of failure to pay such annual license within thirty (30) days of July 1st of each year, such signs or bill-boards shall be torn down by the fire department under the directions of the Commissioner of Buildings.

Section 6. Any person, firm, company or corporation who violates, disobeys, omits, neglects or refuses to comply with, or who resists or opposes the execution of any of the provisions of this ordinance, shall be subject to a fine of not less than five ($5.00) dollars per day, nor more than fifty ($50.00) dollars per day; and every such person, firm, company or corporation shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglect or refusal shall continue, and shall be subject to the penalty imposed by this Section for each and every such separate offense, and any builder or contractor who shall construct any sigh or bill-board on vacant property in violation of any of the provisions of this ordinance shall be subject to a like fine.

Section 7. This ordinance shall be enforced from and after its passage.

In discussing the provisions of this ordinance and

illustrating its reasonable terms and conditions we can do no better than use the language of Master in Chancery Mr. G. Fred Rush, in his report to the court of his findings.

Mr. Rush gave a great deal of attention to this case and expended a vast amount of time in searching the authorities before finally making his report, and his opinion is entitled to great consideration by the courts and by all laymen interested in the subject of bill-boards.

He quotes the following powers of the City Council:

Sixty-first.—To prescribe the thickness, strength and manner of constructing stone, brick and other buildings, and the construction of fire escapes therein.

(May be relevant to the manner of constructing the bill-boards.)

Sixty-second.—For the purpose of guarding against the calamities of fire, to prescribe the limits within which wooden buildings shall not be erected and placed or repaired without permission.

(May be relevant to the material out of which bill-boards are constructed.)

Sixty-sixth.—To regulate the police power of the city or village and pass all necessary police ordinances.

Seventy-fifth.—To declare what shall be a nuisance and to abate the same; and to impose fines upon parties who may create, continue or suffer nuisances to exist.

Seventy-eighth.—To do all acts, make all regulations which may be necessary or expedient for

the promotion of health or the suppression of disease.

And then says:

"Under its police powers, even if not under more specific statutory power, the defendant city was plainly authorized to pass ordinances on the subject matter of signs and bill-boards possessing features that actually menace the public safety and health as aforesaid. The validity of the several provisions of these ordinances, therefore, depends upon whether or not their provisions, or any of them, are manifestly unreasonable or oppressive, or unwarrantably invade private rights, or clearly transcend the powers granted by statute to this city, or violate the constitution of the state or nation.

We will now examine this ordinance phrase by phrase:

Section 1. 'All signs or bill-boards other than those painted or erected upon any building.'

There is no sufficient reason given why signs on buildings should also be restricted and regulated by this ordinance. The City Council deemed it sufficient to regulate signs and bill-boards on the surface of the ground. The ordinance, as to the phase under consideration, operates uniformly and equally upon all persons and things brought within its provisions. It treats all surface owners alike. The City Council may have taken into consideration the fact that Section 206 of the building code requires that signs on buildings be of

incombustible material, and that wooden signs be not more than 2 feet wide. This restriction has been generally enforced except in the few cases of low sheds where bill-boards existed in violation of Section 206 of the building code. The classification made by the City Council cannot be said to be so without reason as to be arbitrary—it rests upon a reasonable basis.

To continue the language of the ordinance:

'Shall be limited in their superficial area to 100 square feet.'

This is a reasonable and proper regulation, made for the purpose of reducing the wind pressure, thus lessening the danger to life in the case of severe windstorms. Permanent buildings are regulated so as to resist wind pressure. Why should not temporary signs and bill-boards be so regulated? It is authorized under the police power.

'And shall be constructed of sheet or galvanized iron, or some equally incombustible material.'

This is a reasonable and proper regulation for the purpose of guarding against the calamity of fire, and is authorized under the 62d clause and under the police power.

'And such signs and bill-boards shall not be located nearer than 25 feet back of the front line of the lot whereon the same is to be erected.'

The chief danger to the public is not only

the prostration of the boards across the walk in high winds, but their necessarily thin, sheet-like structure makes them peculiarly liable to be carried by the force of the wind. The danger can be lessened by diminishing the size of the boards and by setting the boards back a reasonable distance. Is 25 feet such a reasonable distance? Considering the fact that a later phrase of this ordinance permits the boards to be 10 feet high, some definite distance must be adopted, and it cannot be said that 25 feet is an unreasonable distance. This regulation has not the effect of depriving persons of the use of a part of their property without due process of law. It deprives persons of the right to erect dangerous and unsafe structures on such part of their land as will endanger the public safety. It deprives them merely of the right to misuse their land, and the regulation is pursuant to statutory authority known as the police power.

It is well known that wooden sheds are restricted, not only in size, but are required to be put on the rear part of the lot. Regulations of local legislative bodies to promote the safety and health of the public are of great importance to the people, and courts will interfere only when such regulations are manifestly unreasonable and unauthorized.

'Provided, that signs not to exceed 12 square feet each may be made of wood, but such signs shall in all respects comply with the above provision.'

No objection has been urged against this provision.

Section 2. 'No such sign or bill-board shall be constructed a greater height than 10 feet above the level of the adjoining streets.'

The restriction above mentioned to one hundred square feet would be incomplete without a limitation on the height of the board, because said restriction would still permit, for instance, a board 50 feet high and 2 feet wide, which would be exceedingly dangerous. It is a necessary and reasonable regulation authorized under the police power.

'And the base of the sign or bill-board shall be, in all cases, at least 3 feet above the level of the adjoining street.'

The plain purpose of this provision is to enable people to see under the boards from the public highways, in order that the sign or bill-board may not be a screen favoring the commission of personal nuisance, or other immoral acts, and in order that these boards may not be a convenience for footpads or criminals as a hiding or lurking place. Unlike fences and houses, bill-boards near the walk permit of easy access to their rear. This is a reasonable regulation authorized under the police power.

'In case the grade of adjoining streets has not been established, no sign or bill-board shall be constructed at a greater height than 10 feet above the surface of the ground.'

This is based upon the same reasons as the beginning of Section 2.

Section 3. 'No such sign or bill-board shall be erected within five feet of any other sign or bill-board, and each such sign or bill-board shall have independent support.'

The new construction under Section 1 of this ordinance, being of sheet or galvanized iron, a new reason arises, making it necessary to break the continuity of the boards so as to prevent these boards from conducting lightning, or equally dangerous electricity, by means of crossed wires, a danger becoming more and more frequent in this electrical age. It is well known that every storm precipitates wires, crossing them with trolley or electric light wires, whose deadly currents are thus made to lurk in unexpected places. This is not a remote or fanciful danger when it is considered that this complainant company has about *27 miles* of these boards.

But this five-foot space interval is still more important in lessening the surface of the boards and providing for the relief of wind pressure in storms, and this provision also requires more strength in the supports and insures that the same are independent.

Recognizing that these temporary structures are not susceptible of permanent and safe building construction which would be suitable for other purposes, the Council has handled the subject in a practical way to prevent this danger, demolition by wind. To this end it has limited the height; it has set the boards back from the street (thus permitting them to be higher than if set near the sidewalk); it has limited the area, and finally to make effect-

ive this limitation of area and to strengthen the boards, it has limited the boards laterally by insisting upon five-foot intervals and independent supports.

Thus Section 3 cannot be said to be unreasonable and is warranted under the police power."

From the foregoing it will be seen that Mr. Rush, Master in Chancery, has held, in forcible and pertinent language, that Sections 1, 2 and 3 of the foregoing ordinance are valid and reasonable and entirely within the police power of the City Council to pass. These sections comprise the main features of the ordinance, and with the exception of Section 4 clearly show what the City of Chicago and its citizens desire in the way of a bill-board ordinance. This is by no means ruining the business of the bill-board companies, but merely regulating the immense boards in a reasonable and proper manner.

Section 4 of the ordinance is of great importance to the city. It is the section that provides that no bill-board shall be erected on any residence street unless the consent, in writing, of three-fourths of the residence and property owners is first obtained.

The Master held this section void for the reason that it discriminates between different localities of the city. We admit that, under the law as it is at present, the validity of this section is doubtful, but we insist that this is a reasonable and proper regulation. It is just and right that the people should have a voice in this matter when it so nearly affects their safety and the beauty of the locality in which they live.

The Master holds that Section 5 of the ordinance is invalid for the reason that its terms are unreasonable, the evidence showing that the license fee re-

quired would amount to an immense sum per annum. We admit that this is correct, but the fault is easily remedied.

The Master holds Section 6 to be valid and reasonable.

In the course of his report Mr. Rush uses the following language:

> "The construction of these boards would be fairly safe and substantial for a board not to exceed ten feet in height. They are not safe, nor substantial, not permanent when their height, continuity and situation are taken into consideration. The necessity of keeping the front of these boards free of obstruction makes those near the public walks more liable to fall over the walks than to fall backward when the uprights break or wear or rot attacks them, and their sheet-like structure makes them peculiarly liable to be blown some distance by a high wind.
>
> The bill-boards of complainant, built of combustible materials; more than ten feet high; of continuous length; situated within 25 feet of the public sidewalk line on many of the most traveled thoroughfares, and built nearer the ground than three feet, constitute a public danger as a source and communication of fire and conflagration, and constitute a danger to the public safety in the event of severe windstorms, and they, indirectly, produce danger to the public health from the personal refuse deposited behind them.
>
> For the reasons stated, the bill-boards, as described, constitute public nuisances."

The immense wooden bill-boards now defacing the city and every boulevard and park were erected and are now maintained in violation of law. A great many of them were erected by false and fraudulent permits obtained by devious methods.

Judge Chetlain of the Superior Court, in deciding the case of the American Posting Service against the City of Chicago, a case in all respects similar to the present case, and commenced for precisely the same purpose, uses the following language in dismissing the suit and denying the relief prayed for:

> " What, then, is the situation of this case, as I view it? *The complainant is maintaining, in violation of law*, certain structures, and appeals to a court of equity to protect it in the enjoyment and use of these structures, in direct violation of the terms of what I have held to be in part a valid ordinance. I do not deem it necessary to further inquire into the question of how far the city is authorized to proceed in the destruction of these structures. The question which I must first determine is, has the complainant any rights which are in equity and good conscience entitled to the protection of this court? I feel compelled to answer this question in the negative. Until instructed by the superior wisdom of some court above this court in authority, I shall hold that, in a court of equity, the party engaged in an illegal enterprise is entitled to no relief necessary to its successful operation. *Those who successfully defy the law may possibly enjoy many advantages* under the ancient maxim, *melior est conditio defendantis*, who when, as actors, they apply

for relief in equity, their alleged rights should be subjected to a zealous scrutiny. If asserted contrary to law, a court of chancery has no authority to interpose for their preservation. To do so is neither justified by the principles of sound morality nor an enlightened public policy. A firm insistence by the courts in enforcing the law in this regard will do much to correct many evils of which there is just and great complaint. He who obeys the law must be protected by the law; *but he who acts outside of it should not expect a chancellor to aid him to prostrate and defeat it.*

"This court can afford complainant no relief. The prayer for injunction will, therefore, be denied and complainant's bill dismissed."

This decision was rendered some time ago and the complainant prayed an appeal. Its attorneys have done nothing towards perfecting this appeal to the higher courts, but, instead, have appeared in the present case and given aid to the Gunning System by their voices and presence throughout the oral argument, in the hope that they might derive some comfort and help from the decision of another court of concurrent jurisdiction.

Is the great City of Chicago helpless in this matter?

No, a thousand times NO.

As well say a physician of national repute is powerless to cure a sore thumb.

There is no such thing as a vested right in any of these wooden bill-boards. They have been and are being erected by fraud and in direct violation of the law, and are being maintained in violation of laws as solemn and of as much potency as acts of the legislature.

The permits issued by the City of Chicago for the erection of some of these bill-boards are mere licenses, revocable at the pleasure of the city.

One of the most familiar doctrines in a court of chancery is that the party asking for relief must come into court with clean hands.

The dirtiest pair of hands ever exposed in a court of equity are held up by the complainant in this case.

It is doing business in violation of the law. It has erected and is maintaining its bill-boards in violation of the law, and has obtained so-called permits from the building department by fraudulent and devious methods for the erection of *fences*, and under these permits, issued merely to blind the citizens of Chicago and the residents of a particular neighborhood, have erected frame bill-boards, in some instances, 24 feet in height and as long as the length of the vacant lot on which they are built will permit.

It is doing now, and has been doing for years, that which the law would not permit any private person to do.

Any court of chancery in Cook County had better pause and deeply reflect before it throws its protecting arm around the complainant in this case.

If a court of equity enters an order for a permanent injunction forever restraining the City of Chicago from interfering with these bill-boards, then well may the citizens of Chicago lose hope.

BRIEF.

I.

He who comes into a court of equity must come with clean hands.

Bispham's Equity, 2d ed., p. 60.
Winslow vs. Noble, 101 Ill. 194.
Kassing vs. Durant, 41 Ill. App. 93.
Commercial N. Bank vs. Bench, 141 Ill. 519.

II.

He who seeks equity must do equity.

Bispham's Equity, 2nd ed., p. 61.
Bates vs. Wheeler, 1 Scam. 34.
Carver vs. Lasater, 36 Ill. 183.
Winslow vs. Noble, 101 Ill. 194.
Com. Nat. Bank vs. Bench, 141 Ill. 519.

III.

Comparison of charter powers of City of Rochester, N. Y., with City of Chicago.

Rochester vs. West, 56 N. E. Rep. 673.

IV.

It is a well-settled rule, both in England and America, that a court of equity has no jurisdiction to interfere by injunction to restrain a criminal prosecution, whether the prosecution be for violation of statutes or the infraction of municipal ordinances. It is not within the power of the parties to waive the

question relating to the jurisdiction of the court and compel it to try the cause.

If the prosecution is under an ordinance, no ground for enjoining it is constituted by the fact that the ordinance is void.

A. & E. Encyclopædia of Law, vol. 16, pp. 370-1.
" " vol. 10, p. 914.
High on Injunctions, sec. 700.
Chicago P. S. E. vs. McClaughrey, 148 Ill. 372.
Chicago vs. Wright, 69 Ill. 318.
Poyer vs. Desplaines, 123 Ill. 114.
Moses vs. Mobile, 52 Ala. 198.
Jones vs. Oil Co., 17 Ill. App. 114.
C. B. & Q. R. R. vs. Ottawa, 148 Ill. 400.
Phillips vs. Stone Mountain, 61 Ga. 386.
Pierce vs. Little Rock, 39 Ark. 412.
Gaestner vs. Fond du Lac, 34 Wis. 497.
Chicago vs. Collins, 176 Ill. 9.
Chicago vs. Wilkie, 88 Ill. App. 316.

V.

The legality or illegality of the ordinance is purely a question of law which the common-law court is competent to decide.

Poyer vs. Desplaines, 123 Ill. 114, 115.

ARGUMENT.

I.

Bispham in his treatise on the Principles of Equity in the chapter devoted to Maxims says:

> "He who comes into equity must do so with clean hands; or as the maxim has been otherwise expressed, 'He that hath committed iniquity shall not have equity.'"

This is an old doctrine recognized in all courts.

In the case of Winslow vs. Noble, 101 Ill., 194, the court uses the following language:

> "There is another well-established rule in equity which ought not to be overlooked in a case of this character, which is, that a party must come into a court of equity with clean hands, otherwise his bill will be dismissed." (Thorp vs. McCullum, 1 Gilm., 614.)

Again in the case of Com. Nat. Bank vs. Burch, 141 Ill., 530, the court say:

> "On the contrary, the Kalamazoo Paper Co. comes into a court of equity and seeks affirmative relief in its own behalf. To entitle it to such relief it must come with clean hands and be prepared to do equity. A party will not be permitted to come into a court of equity to enable him to reap the fruits of fraud."

The Gunning System is in this court seeking affirmative relief, and under the circumstances, as set forth

in our argument on the facts, this old and well established rule should not be overlooked in this case. It is a violator of the law and has the fortitude to come into this court and ask that the municipal authorities be prevented from executing that law.

II.

He who seeks equity must do equity.

The legal definition of the word "equity" is "equality of right; exact justice between contending parties; fairness in determining conflicting claims; justice."

Why did the complainant in this case make arrangements with the building commissioner for the issuing of illegal permits? Were these permits, for fences, used for the purpose of deceiving the police department? or for the purpose of committing a fraud on the residents of certain localities where the complainant desired to erect bill-boards? Has the complainant been just, upright, fair between man and man and fair to the city? These are pertinent inquiries.

If not, then it is not entitled to any relief in a court of equity.

III.

In the case of Rochester vs. West, 56 N. E. Rep., 673, the Court of Appeals of New York held that the Council had authority, under its charter, to regulate the height of bill-boards, so far as such regulation was necessary to the safety of inhabitants and passers-by.

The full report of this case follows:

> "1. Under Rochester city charter (Laws 1880, c. 14, sec. 40, subd. 21, as amended by Laws 1894, c. 28, sec. 9), authorizing the city to license and regulate bill-posters and sign-

advertising, and to prescribe the terms and conditions on which any such license should be granted, the Council had authority to regulate the height of bill-boards, so far as such regulation was necessary to the safety of inhabitants and passers-by.

2. The statute, being intended to allow the Council to provide for the welfare and safety of the community, was within the police power of the legislature.

3. Where a statute was enacted to prevent injury to the people at large, the fact that no injury had occurred, or is likely to occur, is not controlling on the question of its validity, which is to be determined by its general purpose, and its efficiency to effect that end.

4. An ordinance prohibiting the erection of bill-boards exceeding six feet in height without the permission of the Council is not an unreasonable and undue restraint of a lawful business, or of the lawful use of private property; being intended to provide for the safety of the community.

Appeal from Supreme Court, Appellate Division, Fourth Department.

Robert West was convicted in the police court of Rochester of violating a city ordinance regulating bill-posting and appealed. On affirmance by the County Court (51 N. Y. Supp., 482), accused appealed to the Appellate Division, which affirmed the judgment. 53 N. Y. Supp., 1101. Appeal on certified questions from the Appellate Division. Affirmed

The defendant is the local manager of a corporation known as the 'Rochester Bill

Posting Company' and was arrested April 30th, 1897, charged with the violation of Sections 8 and 9 of an ordinance of the City of Rochester, entitled 'An ordinance relating to bill-posting and bill-boards,' adopted by the common council of the city December 22, 1896. These sections are as follows:

'Section 8. No person shall hereafter erect any bill-board more than six feet in height within the City of Rochester without permission of the common council. Every applicant for permission to erect a bill-board more than six feet in height within said city is required to give one week's notice in writing, personally or by mail, of such application to the owners, occupants or agents of all houses and lots within a distance of two hundred feet from where such bill-board is to be erected. No such application shall be considered by the common council without verified proof of the service of the notice herein described, or the written consent of such owners, occupants or agents to the erection of said bill-board.

Section 9. No fence or other structure within said city shall be used as a bill-board without the consent of the common council. The same notice and proof required by Section 8 of this ordinance shall be necessary to obtain the consent of the common council to use such fence or structure as a bill-board.

Section 10 provides for a time in case of the violation of any of the provisions of the ordinance.

It is admitted that the defendant on April 26th, 1897, erected a bill-board more than six

feet in height on premises fronting on Lake Avenue between White and Spencer Streets, and back of the street line, without taking any of the steps provided for by the foregoing ordinance. It was also conceded that 'such bill-board was erected upon land leased by the said Rochester Bill Posting Company, and that such bill-board was well constructed, of new material,' and 'that, out of six thousand posters put up each week for forty weeks of the year, not more than four hundred would go upon a bill-board six feet high.' The case was submitted to the police justice upon these facts, no other testimony being taken, and on June 4th judgment was entered against the defendant for the sum of five dollars. On appeal the County Court affirmed the judgment. The appellate division affirmed the judgment of the County Court, and allowed an appeal to this court, certifying the following questions: 'First, whether or not the common council of the City of Rochester has authority, under subdivision 21 of Section 40 of its charter, to pass the ordinance under consideration in this case. Second, whether or not the ordinance in question is not an unreasonable and an undue restraint upon a lawful trade and business, and also a restraint upon the lawful and beneficial use of private property.'

John R. Fanning, for appellant. P. M. French, for respondent.

Martin, J. (after stating the facts). Whether this appeal should be sustained depends wholly upon the validity or invalidity of an ordinance of the plaintiff which forbids the

erection, within its limits, of bill-boards more than six feet in height without the consent of the common council. By its charter the plaintiff was authorized 'to license and regulate bill-posters and bill-distributors and sign advertising, and to prescribe the terms and conditions upon which any such license shall be granted, and to prohibit all unlicensed persons from acting in such capacity.' Laws 1880, c. 14, sec. 40, subd. 21, as amended by laws 1894, c. 28, sec. 9. We think this statute conferred upon the common council of the city authority to regulate boards erected for the purpose of bill-posting, so far, at least, as such regulation was necessary to the safety or welfare of the inhabitants of the city or persons passing along its streets. That is precisely what the ordinance in question was intended to accomplish. To regulate is to govern by, or subject to, certain rules or restrictions. It implies a power of restriction and restraint, not only as to the manner of conducting a specified business, but also as to the erection in and upon which the business is to be conducted. Cronin vs. People, 82 N. Y., 318, 321.

Nor do we think that the appellant's claim that this statute was unauthorized can be sustained. It is obvious that its purpose was to allow the common council to provide for the welfare and safety of the community in the municipality to which it applied. If the defendant's authority to erect bill-boards was wholly unlimited as to height and dimensions, they might readily become a constant and continuing danger to the lives and persons of

those who should pass along the street in proximity to them. That the legislature had power to pass a statute authorizing the city to adopt an ordinance which, if enforced, would obviate that danger, we have no doubt. Nor was it in conflict with any provision of the state or federal constitution. The fact that no injury has occurred by reason of the erection of the bill-board in question, or that it is improbable that any such injury shall occur therefrom, is not controlling upon the question under consideration. The validity of a statute is not to be determined by what has been done in any particular instance, but by what may be done under it. Stuart vs. Palmer, 74 N. Y., 183; Gilman vs. Tucker, 128 N. Y., 190, 200, 28 N. E. 1040, 13 L. R. A. 304. It is equally true that the validity of a statute or ordinance is not to be determined from its effect in a particular case, but upon its general purpose and its efficiency to affect that end. When a statute is obviously intended to provide for the safety of a community, and an ordinance under it is reasonable and in compliance with its purpose, both the statute and the ordinance are lawful, and must be sustained. Village of Carthage vs. Frederick, 122 N. Y. 268, 25 N. E. 480; People vs. Pratt, 129 N. Y., 68, 29 N. E., 7; Mayer, etc., of City of New York vs. Dry-Dock, E. B. & R. Co., 133 N. Y., 104; 30 N. E. 563; City of Rochester vs. Simpson, 134 N. Y., 414, 31 N. E. 871; People vs. Havnor, 149 N. Y., 195, 204, 43 N. E., 541, 31 L. R. A. 689. We are of the opinion that this ordinance is reasonable; that the legis-

lature authorized its adoption; that the statute in pursuance of which it was passed was valid; and, consequently, that the defendant's appeal cannot be sustained.

It follows that the judgment appealed from should be affirmed. The questions certified to this court are answered as follows: (1) The Common Council of the City of Rochester had authority, under its charter, to pass the ordinance under consideration. (2) The ordinance in question is not unreasonable or an undue restraint of a lawful trade or business, nor a restraint upon the lawful and beneficial use of private property.

O'Brien, Bartlett, Haight, Vann and Landon, J. J., concur; Parker, C. J., not sitting.

Judgment affirmed, with costs."

IV.

We contend that a court of chancery has no jurisdiction in cases of this character.

The leading case in Illinois on this subject is Chicago Public Stock Exchange vs. McClaughrey, published in the 48th Illinois Supreme Court Reports, page 372.

This case was a bill of injunction filed against the Superintendent of Police of the City of Chicago to restrain him from interfering with its business of buying and selling stocks, bonds, grain, pork and produce, and from interfering in its peaceable possession of the hall where said business was being carried on.

The bill alleged that the defendant, acting through his subordinates, took forcible possession of said hall, separated the wires which connected with a telegraph instrument, cut the wires running to the electric lamps, and took possession of and carried away the private

letters, statements, accounts and other property of complainant and others occupying said hall, and notified such persons and tenants that he would continue to raid said hall and carry away their letters, statements and other property, so long as they should persist in attempting to do business in said hall; that by reason of such conduct the rental value of said hall is depreciated and complainant could not rent portions of the same, to its great and irreparable damage, which damage cannot be exactly measured and sustained.

The defendant, by the city law department, filed an answer in which he alleged that there was an ordinance covering the business carried on by complainant and that he was enforcing that ordinance.

The case was appealed by the Stock Exchange, and the Supreme Court, speaking through Mr. Justice Magruder, says:

> "As a general rule, equity will not enjoin the exercise of police power given by law to the officers of a municipal corporation, or interfere with the public duties of any of the departments of government or restrain proceedings in a criminal matter. (Citing cases.)
>
> But, aside from this consideration, the bill seeks to enjoin the commission of a trespass or of threatened trespasses by the same person or agency, and thereby shows upon its face that complainant had a complete remedy at law. It alleges that complainant had leased a hall and fitted the same up for a place where brokers might meet to carry on their business, and for the purpose of renting them desk-room, and that it sublet desk-room in said hall to various persons, and that its sole business was the subletting of said hall, etc.

Hence the injury suffered would be nothing more than a loss of the fair rental value of the premises leased. Whatever injury might be done to the business of complainant could be determined in an action at law. The loss suffered would be susceptible of compensation in damages. There is nothing upon the face of the bill to show that the injury to complainant would be irreparable. It is true, that the bill contains a general allegation of irreparable damage, but there is no allegation that the defendant is insolvent, or unable to respond in damages to the amount of loss suffered. A court of equity will only entertain a bill to enjoin a trespass to prevent a multiplicity of suits, or to prevent irreparable injury. It will not interfere to prevent a trespass upon the ground of irreparable injury unless the facts and circumstances are alleged, from which it can be seen that irreparable injury will be the result of the act complained of, and that there is no adequate remedy at law.

To warrant interference upon the ground of a multiplicity of suits there must be different persons assailing the same right, and not a mere repetition of the same trespass by the same person, the case being susceptible of compensation in damages. (1 High on Inj., sec. 700.) 'If the right is disputed between two persons only, not for themselves alone, the bill will be dismissed.' (2 Story's Eq. Jur., sec. 857.) If the right claimed affects numerous parties, equity will sometimes enjoin a continuance of [illegible] igation because the

judgment against one of the parties would not be binding on the others. But where there are continued suits between two single individuals, arising from the separate repetition of trespasses, equity will not interfere by injunction where the right has not been established at law, because a judgment in any one of the suits would be evidence in all the others. If the right has not been established at law, the necessity of intervention does not exist. (Moses vs. Mayor of Mobile, supra; Poyer vs. Village of Desplaines, supra; Pratt vs. Kendig, 128 Ill., 293.)

* * We are of the opinion, for the reasons here stated, that the want of equity upon the face of the bill was properly taken advantage of upon the hearing, and that there was no error in dissolving the injunction and dismissing the bill."

From this decision, which has never been reversed and is the law of Illinois to-day, we perceive that there are but two exceptions to the rule that equity will not enjoin the enforcement of an ordinance duly passed by the City Council.

These two exceptions are:

1. To prevent a multiplicity of suits.
2. To prevent irreparable injury.

Let us see whether the present case comes within either of these exceptions.

MULTIPLICITY OF SUITS.

In the case last cited the court say:

> "To warrant interference upon the ground of multiplicity of suits there must be different persons assailing the same right, and not a mere repetition of the same trespass by the same person. If the right is disputed between two persons only, not for themselves and all others in interest, but for business alone, the bill will be dismissed. Where they are continued suits between two single individuals, arising from the separate repetition of trespasses, equity will not interfere by injunction where the right has not been established at law."

It is manifest that the complainant in this case is seeking to enjoin the interference, by the city, of its bill-boards, which is a right disputed between two persons only, viz.: the City of Chicago and the Gunning System.

Thus it is clear that the present case does not fall within the first exception.

IRREPARABLE INJURY.

Concerning this subject the Supreme Court say in the same case:

> "The injuries suffered would be nothing more than a loss of the fair rental value of the premises leased. Whatever injury might be done to the business of complainant could be determined in an action at law. The loss suffered would be susceptible of compensation in damages. There is nothing upon the

face of the bill to show that the injury to complainant would be irreparable. It is true, that the bill contains a general allegation of irreparable damage, but there is no allegation that the defendant is insolvent, or unable to respond in damages to the amount of loss suffered."

In the present bill-board case the city threatened, under an ordinance of the city, to tear down large wooden advertising signs, erected and maintained in violation of law.

In the Stock Exchange case the city threatened, under an ordinance, to cut all wires and carry away all property used in the business.

In the one case the complainant rented the hall and wires, in the other the complainant rented the bill-boards.

The similarity of the two cases could not be greater, and the court held, in the Stock Exchange case, *that whatever injury done to the business of complainant could be determined at law.*

In the oral argument in the case at bar the court intimated that, because property rights were involved, therefore a court of equity would assume jurisdiction.

It is worthy of note that in the opinion of the court in the Stock Exchange case, although the facts show that property rights were assailed, the court failed to touch upon this question, presumably holding that this fact makes no difference on the question of jurisdiction of a court of equity to prevent the execution, by the officers of a municipality, of an ordinance.

In fact, if the law were different, it would, in effect, give a court of equity the executory powers of a municipality.

Counsel for complainant argue that the City of Chicago would not be liable for damages in the event that the officers of the city tore down its bill-boards, but that the complainant would be compelled to look for redress from the particular men who actually performed the act of demolition, and that therefore their injury would be irreparable.

They cite, in authority of this position, the line of cases holding that the city is not liable, in damages, for the acts of its policemen and firemen.

These cases turn on the theory that the police officers and members of the fire department, although appointed by the municipal corporation, are not agents and servants of the city, but they act rather as officers and agents of the state, charged with a public service.

Wilcox vs. Chicago, 107 Ill., 332.

In a case like the one at bar the City of Chicago alone would be liable to respond in damages.

Under an ordinance, duly passed by the City Council, ordering the removal or demolition of certain wooden structures, erected in violation of law, the Commissioner of Public Works serves a reasonable notice on the owners of these structures, ordering their removal in a certain specified time. At the end of this time, if the notice has not been obeyed, the city directs three or four day laborers, for instance, to tear down the obnoxious structures.

Can the city hide behind these irresponsible laborers? Of course not. The contrary would not be seriously contended by any lawyer.

The city would be liable just the same if policemen or firemen did the actual work.

If the contrary was the law, all the city would have to do to absolve itself from all law suits and litigation of this character, would be to dress all its workmen in

the uniforms of policemen or firemen, and swear them in as such for the time being.

The law establishes a rule called the measure of damages in this class of cases, and under this rule a court of common law could ascertain the damages to complainant, if it were entitled to any damage, which could only be in the event that the ordinance was held to be illegal.

The court, on the facts shown in this case, cannot assume jurisdiction under the second exception to the general rule as above noted, and therefore the rule, as handed down by our Supreme Court, which, until reversed, is the law of this State, holds good and is applicable to the case at bar, that *courts of equity will not enjoin the exercise of police power given by law to the officers of a municipal corporation or interfere with the public duties of any of the departments of government, or restrain proceedings in a criminal matter.*

The case of Poyer vs. Village of Desplaines, 123 Ill., 111, is also directly in point.

The Village of Desplaines passed an ordinance prohibiting public picnics within its limits and a bill was filed to restrain the village from enforcing the ordinance.

The opinion was delivered by Mr Justice Shope, who says:

> "Courts of equity will not, as a general rule, interfere to restrain criminal or quasi-criminal prosecution. * * * The legality or illegality of the ordinance is purely a question of law, which the common law court is competent to decide. When ordinances have been enacted by the proper authority, a court of equity will not interfere by injunction to

restrain their enforcement in the appropriate courts upon the ground that such ordinances are alleged to be illegal or because of the alleged innocence of the party charged. * *

If the ordinances are invalid, they furnish no warrant for prosecutions, or the imposition of fines, or the recovery of penalties under them, and would be no shield in an action at law against those responsible for the injuries inflicted upon the complainant by such prosecutions. If the authorities of this village can be enjoined from prosecuting under an ordinance preservative of the peace (as this one certainly is), so they might be restrained from the enforcement of any other ordinance of the village. Their efforts to discharge their duty to the public would be rendered unavailing, and the community left at the mercy of the lawless and vicious elements of society until such time as the question could be settled in the courts of equity. If it should at last be determined that the ordinance was valid, that court would be powerless to enforce its provisions or impose the penalties denounced against its violation, but must remit the cases to the courts of law, which, before the assumption of jurisdiction by the courts of equity, had the right to determine every question submitted to and determined in the equity jurisdiction.

In McCoy vs. Chillicothe, 3 Ohio, 379, it is held that the repetition of actions for trespasses between the same parties is not that multiplicity of suits which will induce a court of equity to interfere by injunction. * * *

If the ordinance is valid, as held by the court imposing the penalty mentioned, equity will certainly not interfere to protect the complainant from deserved punishment for its violation, nor because the common-law court may have erred in his judgment as to the complainant's guilt or innocence. Nothing could be more detrimental to society, and provocative of violations of law, than for courts of equity to interfere in such cases by injunction, and thereby protect repeated acts in violation of ordinances which might each furnish new ground of complaint. While the injunction continued the functions of municipal government would be suspended, and irreparable injury might thereby ensue. If the municipal law be of doubtful validity the complainant cannot, by his willful and repeated violation of its provisions, each furnishing separate grounds for prosecution and depending upon separate facts, create this ground for equitable interposition without first settling the validity of the ordinance in the courts of law. If he fears the prosecution of other suits he can refrain from the repetition of his acts in violation of its provisions until the proper forum has determined its validity."

Perhaps it might be thought that the object and character of the particular ordinance effected the law applicable to these cases. This is not the fact.

The Supreme Court has passed on exactly this point in the case of C. B. & Q. R. R. vs. Ottawa, 148 Ill., 397.

This was a case brought to enjoin the City of Ottawa from enforcing an ordinance directing the railroad company to erect gates at crossings.

After quoting freely from the case of Poyer vs. Village of Desplaines, *supra*, the court say:

> "If a court of equity would not interfere, by injunction, in the case last cited (Poyer case), why should it do so in this case? There, as here, the complaint was that the ordinance was invalid, and that the complainant was prosecuted, in a multiplicity of suits, for the violation of the ordinance, and that he will suffer irreparable injury unless the suits are enjoined. The fact that the offense for which the prosecution were instituted in this case is different from that in the cases cited does not affect the *principle involved*. There, as here, an ordinance had been passed by a municipality providing for the payment of a certain sum as a penalty for a violation of the ordinance, and the question was whether the municipal legislation was valid or invalid. Whether the ordinance related to one *subject or another was a question of no special importance*. What difference can it make, in reference to the tribunal in which an ordinance shall be enforced, whether the ordinance relates to a nuisance, or whether it enjoins upon a railroad company a duty imposed for the protection of the lives of its citizens? In each case a penalty is imposed for a violation of the ordinance, and no reason is perceived why the validity of that penalty should in one case be inquired into in a court of law and in the other in a court of equity."

In the cases cited above, bills have been filed in

cs of equity to prevent the enforcement of ordi-nances for illegal dealing in stocks, grains, etc.; to prevent public picnics and to compel the erection of gates at railroad crossings, and in each case the Supreme Court has held that courts of equity have no jurisdiction.

In this case we have a bill-board ordinance.

Will the courts make an exception in favor of bill-boards?

No reason can be assigned why they should do so In fact, the Supreme Court, in the C. B. & Q. R. R. Co. case, has explicitly stated that the ordinance makes no possible difference.

Since the filing of this bill in *March 27, 1901*, nearly two years ago, the City of Chicago has been prevented from enforcing its ordinances in relation to this matter. What better illustration could be given to the language of the Supreme Court in the *Poyer* case where the court say: "Nothing could be more detrimental to society, and provocative of violations of law, than for courts of equity to interfere in such cases by injunction, and thereby protect repeated acts in violations of ordinances which might each furnish new grounds of complaint. While the injunction continued, the functions of municipal government would be suspended, and irreparable injury might thereby ensue."

Almost irreparable injury has ensued to our parks, boulevards, pleasure driveways and residence streets.

Our conclusion is that this bill should be dismissed, *first*, for want of equity; *second*, because the complainant has not come into court with clean hands; *third*, for lack of jurisdiction.

Respectfully submitted,

BYRON BOYDEN,

Solicitor for defendant and Counsel for the Municipal Art League of Chicago.

HAMLIN & BOYDEN,

of Counsel.